

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA DIVISION**

**TENTATIVE RULINGS**

EVENT DATE: 06/03/2016  
JUDICIAL OFFICER: Kevin DeNoce

EVENT TIME: 08:20:00 AM

DEPT.: 43

CASE NUM: 56-2015-00465460-CU-BC-VTA  
CASE TITLE: AEROVIRONMENT INC VS. TORRES

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Motion to Strike - Objections and Compel Further Testimony Supporting Memorandum of Points and  
CAUSAL DOCUMENT/DATE FILED: Motion to Strike, 04/27/2016

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**The morning calendar in courtroom 43 will begin at 9 a.m. Cases including *ex parte* matters will not be called prior to 9 a.m.**

**Please check in with the courtroom clerk by no later than 8:45 a.m. If appearing by CourtCall, please call in between 8:35 and 8:45 a.m.**

With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you can send an email to the court at: Courtroom43@ventura.courts.ca.gov or send a telefax to Judge DeNoce's secretary, Hellmi McIntyre at 805-477-5894, stating that you submit on the tentative. Do not call in lieu of sending a telefax. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

For general information regarding Judge DeNoce's rules and procedures for law and motion matters, ex parte matters, telephonic appearances, trial rules and procedures, etc., please visit: <http://www.ventura.courts.ca.gov/Courtroom/C43>

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**The court's tentative ruling is as follows:**

Overrule objections to Dorny declaration. Continue for requisite declaration by party invoking state secret privilege (i.e., Defendant(s).)

In situations where the confidential information is "classified" pursuant to government categorization, a private party shall not invoke the privilege and must, instead, defer to the government. (See *United States v. Reynolds* (1953) 345 U.S. 1, 7-8.) In the civil litigation context, the executive branch's power over classified information is embodied in the common-law privilege known as the state secrets doctrine. (*Id.*) The Supreme Court has instructed in *Reynolds* that "[t]he privilege belongs to the Government and must be asserted by it; it can neither be claimed nor waived by a private party. (*Id.* at 7.) The California Court of Appeal has reiterated this standard, indicating that "it is clear that the privilege may be asserted only by the [federal] government itself; neither a private party nor an individual official may seek it aid." (See *Rubin v. City of Los Angeles* (1987) 190 Cal.App.3d 560, 577, quoting *Ellis v. Mitchell*, 709 F.2d 51, 56 (1983.)) The formal process was originally outlined in *Reynolds* and articulated in *Rubin* as follows:

*"The state secrets privilege cannot be asserted by a local governmental entity; it is clear that the privilege "may be asserted only by the [federal] government itself; neither a private party nor an individual official may seek its aid. [Fn. omitted.]" (Ellsberg v. Mitchell, supra, 709 F.2d at p. 56.) We stress that the federal government has not intervened in this action to assert the state secrets privilege; the privilege was raised only by the City. In order to invoke the state secrets privilege, there must be a formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration by that officer. (United States v. Reynolds, supra, 345 U.S. at pp. 7-8 [97 L.Ed. at pp. 732-733]; Halkin v. Helms [Halkin II], supra, 690 F.2d at p. 991; Kinoy v. Mitchell (S.D.N.Y. 1975) 67 F.R.D. 1, 8-10.) The requirement that a responsible officer assert the state secrets claim "is to assure that the privilege, which in any event is waivable, is not lightly claimed. Hence, the requirement is that the claim be made by someone in a position of sufficient authority and responsibility to weigh prudently the competing considerations of making evidence available in litigation and protecting important government interests."*

*(Rubin v. City of L.A. supra, 190 Cal. App. 3d 560, 577.)*

The requirements set forth above in *Reynolds* and *Rubin* have not been satisfied in order to invoke the claimed privilege. This matter should be continued to afford Defendants a sufficient opportunity to claim the privilege.